

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NOS. E-21621 E-21622 E-21625 E-21645 E-21646
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PROPOSED DECISION AND ORDER GRANTING FRANCHISES

(Issued December 8, 2004)

APPEARANCES:

MR. ROBERT P. JARED, attorney at law, MidAmerican Energy, 106 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, appearing on behalf of MidAmerican Energy Company.

MR. CRAIG GRAZIANO, attorney at law, Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319, appearing on behalf of the Iowa Department of Justice, Office of Consumer Advocate.

MR. CARL H. HAYS, 2602 O Circle, Adel, Iowa 50003, appearing pro se.

MR. GREGORY M. SCHILDBERG, 1222 Indian Avenue, P.O. Box 94, Casey, Iowa 50048, appearing pro se.

MR. WAYNE THRAILKILL, 1771 120th Street, P.O. Box 57, Earlham, Iowa 50072, appearing pro se.

STATEMENT OF THE CASE

On December 5, 2003, MidAmerican Energy Company (MidAmerican) filed five petitions with the Utilities Board (Board) requesting franchises to erect, maintain, and operate a total of 122.2 miles of 345,000-volt (345 kV) nominal, 362 kV maximum, electric transmission line proposed to be constructed in Pottawattamie,

Cass, Adair, Madison, Dallas, and Polk¹ Counties in Iowa. The petitions are identified as Docket Nos. E-21621 (Pottawattamie County), E-21622 (Cass County), E-21645 (Adair County), E-21646 (Madison County), and E-21625 (Dallas County). MidAmerican filed revisions to the petitions and additional information on April 16, May 13, June 25, July 6, July 23, September 20, and December 6, 2004.

As proposed, the transmission line would originate at the Council Bluffs Energy Center in Pottawattamie County and terminate at a proposed new electric substation in Grimes, Iowa. MidAmerican proposes to build the new transmission line in an existing 161 kV electric transmission line corridor beginning at MidAmerican's Council Bluffs Energy Center Substation and running to MidAmerican's Booneville Substation property. (Petitions Exhibit D.) The proposed line would then follow an existing 345 kV electric transmission line corridor from the Booneville Substation property to a proposed MidAmerican substation near Grimes. (Petitions Exhibit D.) MidAmerican proposes to double-circuit the new 345 kV line with MidAmerican's existing 161 kV line on single pole steel structures from the Council Bluffs Energy Center Substation to the Booneville Substation property. (Petitions Exhibit D.) It then proposes to double-circuit the new line with MidAmerican's existing 345 kV line on single pole steel structures from the Booneville Substation property to the proposed Grimes Substation. (Petitions Exhibit D.)

¹ MidAmerican was not required to file a petition for the portion of the line proposed to be constructed in Polk County because this segment of the proposed line would be located entirely within the city limits of Grimes and entirely within the property of the proposed MidAmerican Grimes Substation. (Tr. 156.) Iowa Code § 478.1 (2003).

MidAmerican requests that it be vested with the power of eminent domain pursuant to Iowa Code § 478.6. As of the hearing, MidAmerican requested eminent domain authority over one parcel of land in Docket No. E-21645 (Adair County) and two parcels in Docket No. E-21646 (Madison County).

MidAmerican originally considered a transmission line route different from that proposed in the petitions and held informational meetings regarding that route in Pottawattamie, Cass, Audubon, Guthrie, and Dallas Counties. (Stursma/Hockmuth Report; docket files.) Two hundred sixty individual objections to this route were filed with the Board, some of them in the form of petitions bearing multiple signatures. (written objections.) Many of the objections noted the existence of a nearby transmission line and suggested that MidAmerican build the proposed transmission line on the existing transmission line route. When MidAmerican changed the route and followed the existing transmission line route, many of these objections were withdrawn. Some objectors filed statements of no objection to the current route, but declined to withdraw their objections. The objections from Audubon and Guthrie Counties do not appear to be related to this case, since MidAmerican no longer proposes to route the line in those counties.² As of the date of the hearing, it appeared that there remained 77 objections to the proposed route. However, 30 of these objectors filed statements of support for the currently proposed route. In addition, all but ten of the objections appear to support the current route or only oppose the original route. One objection requested that MidAmerican file a motion to dismiss the objector and his property from the case.

On September 9, 2004, the Board issued an order consolidating the five dockets listed above and assigning them to the undersigned administrative law judge. On September 16, 2004, the undersigned issued a procedural order and notice of hearing and proposed to take official notice of an August 27, 2004, report concerning the proposed transmission line by Mr. Don Stursma, Manager of the Board's Safety & Engineering Section, and Mr. Dennis Hockmuth, Utility Regulatory Engineer for the Board.

MidAmerican filed prepared direct testimony and exhibits of Mr. Todd M. Raba, Mr. Dehn A. Stevens, Mr. Steven J. Harrison, Mr. Stephen G. Thornhill, Mr. Brian O. Williams, Dr. William H. Bailey, Mr. Tim J. Bunkers, and Mr. Kenneth E. Schwarz on September 23, 2004. It filed a prehearing brief on October 21, 2004.

The Consumer Advocate filed prepared testimony of Mr. Xiachuan (Larry) Shi on October 7, 2004. On October 28, 2004, the Consumer Advocate filed a pre-hearing responsive brief. The Consumer Advocate supports MidAmerican's proposed route and petitions for franchises. (Tr. 205-09; Consumer Advocate Pre-hearing Brief.)

On October 19, 2004, Mr. Carl Hays filed a resistance to MidAmerican's petitions. The resistance included a number of exhibits. On October 27, 2004, MidAmerican filed a response to Mr. Hays' resistance.

MidAmerican caused notice of the hearing to be published in Pottawattamie County in the Council Bluffs Daily Nonpareil, a newspaper of general circulation in the county, on September 29 and October 6, 2004. (proof of publication.)

² MidAmerican did not file petitions for franchises in these counties.

MidAmerican caused notice of the hearing to be published in Cass County in the Atlantic News Telegraph, a newspaper of general circulation in the county, on September 29 and October 9, 2004. (proof of publication.) MidAmerican caused notice of the hearing to be published in Adair County in the Adair County Free Press, a newspaper of general circulation in the county, on September 29 and October 6, 2004, and in The Adair News, a newspaper of general circulation in the county, on October 8, 2004. (proof of publication.) MidAmerican caused notice of the hearing to be published in Madison County in the Winterset Madisonian, a newspaper of general circulation in the county, on September 29 and October 6, 2004. (revised proof of publication.) MidAmerican filed a revised proof of publication for Madison County on November 17, 2004. MidAmerican caused notice of the hearing to be published in Dallas County in The Perry Chief, a newspaper of general circulation in the county, on September 30 and October 7, 2004. (proof of publication)

The hearing was held on November 10, 2004, beginning at 9 a.m., in the Cass County Community Center, 805 West 10th Street, Atlantic, Iowa. Mr. Raba, Mr. Stevens, Mr. Harrison, Mr. Thornhill, Mr. Williams, Dr. Bailey, Mr. Bunkers, and Mr. Schwarz testified on behalf of MidAmerican. MidAmerican's Exhibits 1–11a and 11b –15 were admitted at the hearing. MidAmerican agreed to file the minutes of the May and December 2003 Mid-Continent Area Power Pool (MAPP) Design Review Subcommittee (DRS) meetings after the hearing. (Tr. 62.) It filed the required minutes on November 17, 2004. MidAmerican agreed to file two exhibits after receiving the franchises but prior to beginning construction in the relevant particular areas: 1) information regarding clearances referred to at pages 5–6 of the

August 27, 2004, staff report; and 2) the results of studies regarding existing 30-year-old tower structures in Pottawattamie County referred to at page four of the staff report. (Tr. 282-83.) Mr. Shi testified on behalf of the Consumer Advocate. Mr. Hays testified on his own behalf. Mr. Hays' resistance was treated as prepared testimony and it is included in the transcript of the case. Mr. Hays' Exhibits 200 through 206 were admitted. MidAmerican objected to Mr. Hays' testimony and exhibits on the basis of relevance, stating that Mr. Hays did not appear to have any affected interest that related to the transmission line proposed in this proceeding. (Tr. 213, 232.) The objections were overruled to the extent the testimony and exhibits were admitted as evidence in the case. (Tr. 213-14, 232.) A ruling on the relevancy objections and Mr. Hays' position with regard to the proposed line was deferred and is included in this proposed decision. (Tr. 213, 232.) Mr. Schildberg testified on his own behalf, and Mr. Schildberg's Exhibit GS-250 was admitted. Mr. Thrailkill testified on his own behalf. Mr. Stursma and Mr. Hockmuth testified as the engineers selected by the Board to examine the proposed route pursuant to Iowa Code § 478.4. The remaining objectors and owners of the third eminent domain parcel did not testify at the hearing. The parties did not object to the taking of official notice of Mr. Stursma and Mr. Hockmuth's report dated August 27, 2004 (Stursma/Hockmuth Report), and it was officially noticed.

NEED FOR THE PROPOSED LINE

In order to obtain a franchise, MidAmerican must prove that the proposed transmission line is necessary to serve a public use. Iowa Code § 478.4.

Transmission of electricity to the public is "a public use" within the meaning of the statute. Vittetoe v. Iowa Southern Utilities Company, 123 N.W.2d 878, 880 (Iowa 1963). Therefore, one issue in this case is whether the proposed transmission line is "necessary" to serve that public use.

Although the proposed 345 kV transmission line and the construction of the Council Bluffs Energy Center 4 (CBEC-4) generating plant are related projects, the need for the CBEC-4 generating plant is not an issue in this case. The Board previously approved MidAmerican's application for a certificate to construct and operate the CBEC-4 generating plant and issued a certificate to MidAmerican for this purpose in Docket No. GCU-02-1. Therefore, the only question regarding need relates to whether the proposed transmission line is necessary for the transmission of electricity to the public.

Exhibit D of each of MidAmerican's five petitions describes the purpose of the proposed line. MidAmerican states that:

The proposed line is required to provide outlet transmission service from the 790 MW Council Bluffs Energy Center Unit 4 ("CBEC-4") presently under construction. In addition, the proposed line will maintain and enhance the reliability of MidAmerican's electric transmission network in western and central Iowa.

The need for the proposed line was developed as part of the overall transmission plan for CBEC-4 through a coordinated power system study process including the Joint Owners of CBEC-4 and several other area transmission owners such as the Omaha Public Power District and the Nebraska Public Power District. The transmission plan was endorsed and supported by the two Mid-Continent Area Power Pool ("MAPP") sub-regional planning groups with oversight responsibility for the project. The MAPP Design Review Subcommittee, the MAPP committee with authority for

approving generator and transmission line connections to the MAPP system, has approved the addition of CBEC-4 and the transmission system facilities required to support CBEC-4 as meeting MAPP's reliability criteria.

. . .

The benefits of the CBEC-4 project, including the transmission plan for CBEC-4, include: 1) adding approximately 790 MW of needed generating capacity to meet the growing energy demands of the Joint Owners' customers, of which approximately 600 MW will be used to meet the growing energy demands of Iowa consumers; 2) relieving transmission constraints in and around Iowa; 3) improving transmission reliability in the central and western Iowa areas; and 4) providing voltage support to the transmission system.

. . .

The proposed project is a critical component to the success of the \$1.2 billion CBEC-4 generation facility under construction in Council Bluffs, Iowa. . . . The CBEC-Grimes line will enhance electric transmission reliability throughout western and central Iowa and, together with CBEC-4, will assure present and future businesses of an adequate power supply for present and future economic development of the area. . . . The proposed project is necessary to meet the needs of the public presently served and future projections based on population trends. This need stems in large part from the project's relationship to the construction of the 790 MW CBEC-4 generating facility.

. . .

The proposed line will become an integral part of MidAmerican's existing electric utility system. The proposed line will provide a tie between the Council Bluffs Energy Center ("CBEC") Substation and the new Grimes Substation. . . . The proposed line will supplement the ability of the CBEC – Madison County 345 kV line to deliver output from the Council Bluffs Energy Center to MidAmerican and the Joint Owners of CBEC-3 and CBEC-4. The existing CBEC – Madison County 345 kV line and the existing CBEC – Avoca – Atlantic – Earlham – Booneville 161 kV lines are not adequate to deliver the increased

generating capability with the addition of CBEC-4 while meeting MAPP's reliability criteria.

The evidence supporting the need for the proposed line is undisputed. (Petitions Exhibits D, D-1, D-2; Tr. 26-28, 30-31, 39-49, 56-58, 205-06, 233, 239, 243-44, 248-74; MidAmerican Exhibits 1, 2, 3, 4, 5.) The Consumer Advocate supports construction of the proposed transmission line. (Tr. 203-10; Consumer Advocate Pre-hearing Brief.) Although Mr. Hays filed objections and a resistance to MidAmerican's petition requesting that certain conditions be placed on the grant of the franchises, Mr. Hays testified that he supports the currently proposed route and does not resist the granting of the franchises. (Tr. 233, 239, 243-44.) Mr. Schildberg, Mr. Thrailkill and the remaining objectors' concerns generally relate to location, valuation, impact on farm operations, and electric and magnetic field/health issues rather than the need for the proposed line, although one objector questioned the need for the proposed line. (Tr. 248-74; written objections.)

The existing transmission system is not sufficient to deliver the output from the CBEC-4 generating plant to customers, and construction of the proposed 345 kV line is necessary to deliver the output from CBEC-4 and to improve system reliability in the region. (Petitions Exhibits D, D-1, D-2; Tr. 26-28, 30-31, 39-49, 56-58, 205-06; MidAmerican Exhibits 1, 2, 3, 4, 5.) MidAmerican presented sufficient evidence that demonstrates the proposed transmission line is necessary to serve a public use. (Petitions Exhibits D, D-1, D-2; Tr. 26-8, 30-1, 39-49, 56-58, 205-06; MidAmerican Exhibits 1, 2, 3, 4, 5.)

**RELATIONSHIP TO OVERALL PLAN OF TRANSMITTING ELECTRICITY
IN THE PUBLIC INTEREST**

To obtain a franchise, MidAmerican must prove that the proposed transmission line is reasonably related to an overall plan of transmitting electricity in the public interest. Iowa Code §§ 478.3(2), 478.4.

CBEC-4 is a 790-megawatt (MW) low-sulfur coal-fired generating plant currently under construction in Council Bluffs, Iowa. (Tr. 27; Petition Exhibit D.) The proposed transmission line is a significant component of the comprehensive transmission plan for CBE-4 and will carry the electricity from CBE-4 to a connection with MidAmerican's electric transmission grid near Des Moines. (Petitions; Tr. 27, 40.) MidAmerican will jointly own CBE-4 with 14 other utilities, including two Iowa rural electric cooperatives, ten Iowa cities, the city of Lincoln, Nebraska, and the Municipal Energy Agency of Nebraska. (Tr. 28.) Construction and operation of CBE-4 and the related transmission lines will provide generation capacity and enhance electric transmission reliability for customers of all the joint owners. (Petitions; Tr. 28, 40.) Because of the numerous interconnections among electric utilities, customers in all of Iowa and all of MidAmerican's service territory will benefit indirectly by the enhanced transmission reliability provided by the addition of the proposed transmission line. (Tr. 28, 40.)

The need for the proposed transmission line was determined as part of a coordinated study involving the joint owners of the CBE-4 project, neighboring utilities who are not joint owners of the project, public power districts in Nebraska, and utilities from Missouri and Kansas. (Tr. 56; Petition Exhibit D.) The study

process involved a coordinated approach that included multiple entities and approval from MAPP, the regional reliability council to which MidAmerican belongs. (Tr. 56; Petition Exhibit D.)

The MAPP Design Review Subcommittee (DRS) is responsible for determining whether planned generation and transmission system additions meet MAPP's reliability criteria. (Tr. 37-38, 57; Petition Exhibit D.) MidAmerican was required to obtain the approval of the project from the MAPP DRS. (Tr. 57; Petition Exhibit D.) MidAmerican was required to conduct a System Reliability Study (Study) to gain approval from MAPP's DRS for the CBEC-4 generating plant's interconnection to the regional transmission system. (Tr. 41, 206.) The DRS will approve an interconnection only if it is shown that the interconnection will meet MAPP's reliability criteria. (Tr. 41.) MidAmerican and the joint owners were also required to follow the MAPP Sub-Regional Planning Group (SPG) process that calls for MAPP members to work together to jointly consider system additions. (Tr. 41; Petition Exhibit D.) The applicable SPGs for this project included the Iowa Transmission Working Group and the Nebraska Sub-Regional Planning Group. (Tr. 41; Petition Exhibit D.)

MidAmerican hired a consultant to perform the detailed Study. (Tr. 42, 206.) The proposed transmission line was included because the system performance analysis showed that the existing system in the Council Bluffs area was not sufficient to deliver the output from CBEC-4 to the CBEC-4 joint owners without the addition of the line. (Tr. 42, 206.) The Study concluded that, with the proposed transmission

line included as part of a comprehensive set of electric system additions, the addition of CBEC-4 met MAPP's reliability criteria. (Tr. 42; MidAmerican Exhibit 1.)

On July 25, 2002, the Iowa Transmission Working Group and the Nebraska Sub-Regional Planning Group voted to support the CBEC-4 interconnection. (Tr. 42; MidAmerican Exhibit 2.) The MAPP DRS approved the interconnection of CBEC-4 and the CBEC-4 interconnection facilities, including the proposed transmission line, on August 27, 2002. (Tr. 43; MidAmerican Exhibit 3.)

Since the original Study did not analyze the reliability effects of constructing the proposed line on common towers with the existing 161 kV and 345 kV transmission lines, MidAmerican and other utilities conducted additional studies to determine the reliability ramifications of the common tower plan. (Tr. 49-52; Exhibits 4, 5; Petition Exhibit D.) The reports concluded the MAPP reliability criteria are still met with the common tower plan if certain conditions are met. (Tr. 50-52, 57; Petition Exhibit D.) The MAPP DRS approved the reports, and thus the proposed transmission line, at its May 27-28 and December 18, 2003, meetings. (Tr. 50-54, 205; Stursma/Hockmuth Report; Petition Exhibit D.) MidAmerican committed to meeting the required conditions. (Tr. 50-52, 54, 58-61.)

The Consumer Advocate's witness, Mr. Shi, testified that MidAmerican had demonstrated the common tower approach met the MAPP reliability standard if MidAmerican also made other required modifications to its transmission system. (Tr. 209.) He testified that although placement of two circuits on common structures would risk losing both circuits in a single incident, the risk was within acceptable

bounds, and the advantages of the approach outweighed the disadvantages.

(Tr. 209-10.)

In its petition, a utility company seeking a franchise must include information showing the relationship of the proposed project to economic development, comprehensive electric utility planning, needs of the public both present and future, existing electric utility system and parallel routes, other power systems planned for the future, possible alternative routes and methods of supply, present and future land use and zoning, and inconvenience or undue injury to property owners. Iowa Code § 478.3(2). MidAmerican provided this information in its petitions. (Petitions Exhibit D; Stursma/Hockmuth Report.) This information supports a finding that the proposed transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.3(2). (Stursma/Hockmuth Report.)

The evidence presented in this case shows that the proposed common tower plan meets MAPP reliability standards and the proposed transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (petitions for franchise; Tr. 22-62, 203-10, 286, 288; MidAmerican Exhibits 1–5; Stursma/Hockmuth Report.)

CONSTRUCTION AND SAFETY REQUIREMENTS

In order to obtain a franchise, MidAmerican must show that the proposed transmission line will conform to the construction and safety requirements of Iowa

Code §§ 478.19 and 478.20 and the Utilities Board rules at 199 IAC Chapters 11 and 25.

MidAmerican proposes to construct a 345 kV transmission line 122.2 miles long. (Petitions; Tr. 66.) The proposed transmission line will follow an existing 161 kV electric transmission line corridor from CBEC-4 to the Avoca Substation to the Atlantic Taps to the Earlham Substation and to the Booneville Substation. (Petitions; Tr. 67, 68.) From the Booneville Substation to a proposed MidAmerican substation in Grimes, the proposed line will follow an existing 345 kV electric transmission line corridor. (Petitions; Tr. 67, 68.) MidAmerican will hire contractors to design and construct the proposed line. (Petitions; Tr. 67, 71, 77-78.) The proposed line will be designed to conform to the National Electrical Safety Code requirements and Board rules. (Petitions; Tr. 67.)

The majority of the proposed transmission line will be constructed using self-weathering, single tubular steel pole structures instead of the existing double wood and multiple wood pole structures now in place along the existing easements. (Petitions Exhibit C; Tr. 69; Stursma/Hockmuth Report.) The poles will be typically 120 to 150 feet tall and designed for spans of 600 to 1,000 feet. (Petitions Exhibit C; Tr. 69-70.) MidAmerican witness Mr. Harrison testified the single steel pole structures were selected to reduce the impact on property owners. (Tr. 69.) There will be significantly fewer poles installed along the route because the existing transmission lines are typically on two-pole wooden structures and the spans between the new poles will be longer than the spans between existing poles. (Tr. 69-70.)

The use of single pole structures will make the poles easier to farm around. (Tr. 70.) Additional guy wires and anchors will not be needed because reinforced concrete foundations will be used to support the structures. (Petitions Exhibit C; Tr. 70-71.) The self-weathering poles do not have to be replaced as wood poles do and they do not require painting. (Tr. 71.) This means the cost of routine maintenance is lowered and MidAmerican will not have to enter onto landowners' properties as often. (Tr. 71.) MidAmerican will construct the line using V-string insulator assemblies that are more compact so the existing easement widths can be used with the double circuit transmission lines. (Tr. 69.)

In Pottawattamie County on the CBEC site, MidAmerican plans to use three existing steel structures to support the existing and proposed transmission lines. (Tr. 73.) MidAmerican will have a structural analysis done to confirm the structures are able to support both transmission lines and a climbing inspection will be done. (Tr. 73-74, 79-80.) If required, structural components will be replaced. (Tr. 74.) MidAmerican will file a report with the Board providing the results of the analysis, climbing inspection, and any structural replacement, prior to construction in that particular area. (Tr. 283.)

There are four existing 161 kV line segments: CBEC to Avoca, Avoca to Atlantic, Atlantic to Earlham, and Earlham to Booneville. (Petitions; Tr. 74.) During the non-summer months, only one of these segments will be de-energized at a time so that all five substations will remain energized at 161 kV. (Tr. 74, 78-79.) MidAmerican's contractor plans to erect new structures and remove existing structures as work progresses down the line. (Tr. 74.) The existing wire will be

transferred to the new structures and available for energization if needed. (Tr. 74.)

During wire installation, the contractor will work in section lengths that reduce the time required to energize the circuit, if needed. (Tr. 74.) Safety code requirements, including required clearances, will be maintained in nine locations where buildings or grain bins are near the transmission line. (Tr. 75-76, 150-52, 184-85, 188-99.)

MidAmerican will file a report regarding these locations prior to beginning construction of the line in those particular areas. (Tr. 281-82.)

After construction, MidAmerican will be responsible for operation, maintenance, and inspection of the line, which will be done in accordance with all federal and state safety standards. (Tr. 73, 185, 188-99.)

MidAmerican has shown that the proposed line will conform to the construction and safety requirements in Iowa Code §§ 478.19 and 478.20 and 199 IAC Chapters 11 and 25. (Petitions; Tr. 67-82, 184-85, 188-99, 286, 288; Stursma/Hockmuth Report.) To provide sufficient time for review, MidAmerican must file the reports discussed above at least 30 days prior to beginning construction in the relevant particular area. Other than the requirement that MidAmerican file the reports discussed above prior to construction in particular areas, no terms, conditions, or restrictions regarding construction and safety requirements need to be imposed pursuant to Iowa Code § 478.4.

ELECTRIC AND MAGNETIC FIELDS

Electric and magnetic fields associated with the operation of alternating current power lines or devices supplied with alternating current electricity are often

referred to as EMF. (Tr. 111.) A great deal of research has been done to assess the potential health effects of EMF. (Tr. 114-16.) This research has included epidemiological studies of humans, which include people of varying health and background, but cannot obtain precise measurements of exposure, and experimental studies of animals, which can produce precisely measured exposures, but laboratory animals are not humans. (Tr. 114.)

Numerous organizations responsible for public health have reviewed and assessed the EMF research. (Tr. 115.) These assessments agree there is little evidence suggesting that EMF is associated with adverse health effects, including most forms of adult and childhood cancer, heart disease, Alzheimer's disease, depression, and reproductive effects. (Tr. 115.) The assessments also agree that epidemiology studies in total suggest an association between magnetic fields at higher exposure levels and two forms of cancer: childhood leukemia and chronic lymphocytic leukemia in occupationally exposed adults. (Tr. 115-16.) However, all agree that the experimental studies do not support a causal link between EMF and any adverse health effect, including leukemia, and have not concluded that EMF is the cause of any disease. (Tr. 115-16.) These organizations have not recommended exposure limits or required actions to reduce exposures since they have not concluded that a causal relationship between EMF and adverse health effects exists. (Tr. 115-16.)

The only states with standards that regulate magnetic field levels are New York and Florida. (Tr. 113, 136.) New York has a limit of 200 mG and Florida has a limit of 150 mG for magnetic field levels at the edge of the right-of-way for new

transmission lines at maximum loading. (Tr. 113.) There are no federal standards. (Tr. 113.) There are general recommendations from scientific organizations regarding exposures to electric and magnetic fields for the general public and workers. (Tr. 113.) The purpose of these guidelines is to prevent exposures to electric fields that could produce contact shocks and to magnetic fields that could stimulate tissues by induced electric fields. (Tr. 114.) One international organization, ICNIRP, recommends that the exposure of the general public to electric and magnetic fields be limited to 4.2 kV/m and 833 mG, respectively. (Tr. 114.) Another, the International Committee on Electromagnetic Safety, has published recommendations for limits of 5 kV/m for electric field exposures of the general public and 9,040 mG for magnetic field exposures. (Tr. 114.)

MidAmerican witness Dr. Bailey calculated electric and magnetic field levels for the existing and proposed transmission lines. (Tr. 113.) Along the edge of the right-of-way, at average loading, the highest magnetic field level for the existing 161 kV line is 25 milligauss (mG). (Tr. 137-38.) At maximum design load, the highest magnetic field level for the existing 161 kV line is 42.1 mG. (Tr. 138-39.)

Along the edge of the right-of-way, at average loading, the highest electric field level of the proposed line would be 1 kV/meter and the highest magnetic field level would be 39.9 milligauss (mG). (Tr. 113, 138, 141-42.) Along the edge of the right-of-way, at maximum design load, the highest electric field level of the proposed line would be 1.9 kV/meter. (Tr. 140-41.) At maximum design load, the highest magnetic field level for the proposed line would be 67.3 mG at the edge of the right-of-way. (Tr. 139-40.)

Dr. Bailey concluded that the EMF that will be produced by the proposed transmission line will not adversely affect public health and safety. (Tr. 117, 134.) This is because research on electric and magnetic fields has shown that the levels of these fields that produce adverse effects are well above the levels that will be produced by the proposed transmission line. (Tr. 134.) The adverse effect of high electric field levels is shock, so the standards are based on minimizing the potential for electric shock. (Tr. 135-36.) The adverse effect of magnetic fields is that in the laboratory, magnetic field levels over 100,000 mG were sufficient to stimulate nerves and muscles. (Tr. 135-36.) The electric and magnetic field levels at the edge of the right-of-way of the proposed line will be well below these levels. (Tr. 134-36.)

MidAmerican has taken several steps to minimize electric and magnetic field levels from the proposed transmission line. (Tr. 83.) By placing the phases of the two circuits in proper positions on common towers, EMF fields from both circuits can cancel each other, thus reducing the total EMF field strength at the edge of the right-of-way. (Tr. 83, 208.) MidAmerican has positioned the phases so that the fields will create a cancellation effect. (Tr. 83.) MidAmerican's use of a compact design for the structures brings the phases of the circuits closer together and reduces electric and magnetic field levels. (Tr. 83.) Finally, MidAmerican's use of a vertical configuration also reduces the field levels. (Tr. 83.)

MidAmerican has presented sufficient proof that it designed the proposed line to reduce electric and magnetic field levels and that the levels that will be produced at the edge of the right-of-way of the proposed line will not be harmful to the public health and safety. (Tr. 83, 111-41, 208.) No additional terms, conditions, or

restrictions related to electric and magnetic field levels need to be imposed pursuant to Iowa Code § 478.4.

LINE LOCATION AND ROUTE

The Board has the authority to impose modifications of the location and route of the proposed line that are just and proper. Iowa Code § 478.4.

MidAmerican hired Burns & McDonnell to evaluate alternative routes between the Council Bluffs Energy Center and a new substation to be located in Grimes. (Tr. 89; Petition Exhibit D-1; Stursma/Hockmuth Report.) After extensive study, Burns & McDonnell originally recommended a route following division lines of land, active railroads, and roadways as required by Iowa Code § 478.18. (Tr. 89-90; Petition Exhibit D-1; Stursma/Hockmuth report.) MidAmerican held informational meetings regarding this route in the counties along the route. (Stursma/Hockmuth Report; Petition Exhibit D-2.)

Two hundred and sixty individual objections to this route were filed with the Board, some in the form of petitions bearing multiple signatures. (Objections; Stursma/Hockmuth report.) Many of the objections noted the existence of a nearby transmission line and suggested that MidAmerican build the proposed transmission line on the existing transmission line route. (Objections; Stursma/Hockmuth Report.)

As a result of these objections and input from a variety of stakeholders, MidAmerican requested Burns & McDonnell to expand the initial routing study to include consideration of existing transmission corridors for the entire length of the proposed transmission line. (Tr. 90; Petition Exhibit D-2.) Burns & McDonnell

conducted a supplemental routing study that included the alternative of converting existing transmission lines to double-circuit transmission lines. (Tr. 90-91; Petition Exhibit D-2.) Burns & McDonnell determined the proposed route would have less impact to cropland, woodland, wetlands, streams, and sensitive species habitat. (Tr. 91; Petition Exhibit D-2.) It also concluded that although approximately 40 miles of the route would not be located along division lines of land, the route is shorter in length and confined to an existing transmission line corridor, thus minimizing the impacts to natural and human resources. (Tr. 91; Petition Exhibit D-2.) Burns & McDonnell found that the route is more direct from endpoint to endpoint, which reduces the number of angles greater than 30 degrees along the route. (Tr. 91; Petition Exhibit D-2.) The reduced number of heavy angles would result in some cost savings, potentially reduce the land taken out of agricultural production, and reduce the visibility of the proposed line. (Petition Exhibit D-2; Stursma/Hockmuth report.)

Burns & McDonnell noted this alternative would cost more due to the increased cost of constructing the new line while keeping the existing line in service, reconstructing the existing line, removing the existing line, and the costs for other system upgrades necessary to ensure reliability. (Petition Exhibit D-2.) However, Burns & McDonnell concluded this alternative would have the least overall impact of the routes evaluated and recommended it as the proposed route, provided easements could be obtained and system reliability concerns could be adequately addressed. (Petition Exhibit D-2; Tr. 91.)

MidAmerican then filed its petitions that propose to construct the transmission line on an existing transmission line right-of-way, rather than on a new route following division lines of land. (Petition Exhibits A, B, D-2; Stursma/Hockmuth Report.)

MidAmerican estimates the additional cost for the proposed route is around \$20 million. (Tr. 93-94.) MidAmerican estimated the cost of the original route to be approximately \$80 million, and the cost of the currently proposed route to be approximately \$100 million. (Tr. 94-95.) These estimates do not include the cost savings testified to by the Consumer Advocate's witness, Mr. Shi. (Tr. 95.) Mr. Shi testified MidAmerican and its ratepayers will achieve long-term savings by routing the proposed 345 kV line along the existing 161 kV line. (Tr. 208.) This is because the higher initial cost includes rebuilding the existing 161 kV line, which was constructed in 1956-57, thus avoiding the cost of maintenance on the older line and rebuilding the line later. (Tr. 208.)

MidAmerican has obtained all required environmental reviews and permits for the proposed transmission line. (Tr. 100-04; MidAmerican Exhibits 6–9.)

MidAmerican has received four of five required authorizations for railroad crossings, and will receive the fifth one shortly. (Tr. 107.) It will submit required applications to the Iowa Department of Transportation in early 2005. (Tr. 107.)

MidAmerican has demonstrated that the route it selected is reasonable. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-95, 100-04, 107, 207-09; MidAmerican Exhibits 6–9.) The use of existing transmission corridors will minimize interference with land use and reduce disruption to landowners. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) It will minimize overall

environmental impact. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) There will be less impact to cropland, wetlands, stream crossings, sensitive species habitat, and woodland. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) Use of single pole structures will decrease the amount of land needed for each structure, structures will be further apart, and there will be less interference with farming operations and other landowner uses. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) The proposed route is shorter and more direct than the original route. (Petition Exhibit D-2.) Although more expensive initially, it provides for long-term cost savings because the existing aging 161 kV line will not have to be rebuilt later and maintenance costs will be reduced. (Tr. 94-95, 208; Petition Exhibit D-2.)

Iowa Code § 478.18 requires transmission lines to be constructed near and parallel to roads and railroads and along division lines of land wherever practical and reasonable. The same section requires the utility to construct the line so as not to interfere with the use of the public of the highways or streams of the state and so as not to unnecessarily interfere with the use of any lands by the occupant. The Iowa Supreme Court upheld the Board's conclusion that a new transmission line should follow an existing corridor and that new construction along division lines of land was not practical or reasonable under the circumstances in Gorsche Family Partnership v. Midwest Power, et al, 529 N.W.2d 291 (Iowa 1995). This case is similar to Gorsche. MidAmerican has proven the proposed route is the most practical and reasonable alternative and it should be approved. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-95, 100-04, 107, 207-09; MidAmerican Exhibits 6–9)

EMINENT DOMAIN

Once the Board grants a franchise to MidAmerican for the construction, maintenance, and operation of the proposed transmission line, MidAmerican is entitled to be vested with the power of condemnation, also called the right of eminent domain, to the extent the Board approves and finds necessary, within the width and acre limits in § 478.15. Iowa Code §§ 478.6 and 478.15. MidAmerican has the burden to prove there is a necessity for public use. Iowa Code § 478.15.

In this case, MidAmerican requests the right of eminent domain over three parcels of land, one in Adair County and two in Madison County. (E-21645 Petition Exhibit E-1; E-21646 Petition Exhibits E-6, E-7; Stursma/Hockmuth Report; Tr. 147-50, 180, 272.) Specifically, MidAmerican requests a right-of-way easement for a 100-foot-wide strip of land across each of the three parcels. (E-21645 Petition Exhibit E-1; E-21646 Petition Exhibits E-6, E-7; Stursma/Hockmuth Report.)

Mr. Gregory and Mrs. Kristina Schildberg (Adair County)

Mr. Gregory and Mrs. Kristina Schildberg are the owners of eminent domain tract number IA-AR-023.000 in Docket No. E-21645 (Adair County). (E-21645 Petition Exhibit E-1; Tr. 148, 248, 269.) MidAmerican has contacted or attempted to contact the Schildbergs numerous times to discuss the proposed project and has not been able to obtain a voluntary easement from the Schildbergs. (Tr. 148, 150, 160-61.) MidAmerican attempted to serve the Schildbergs with notice of the eminent domain request, but they refused service. (Tr. 264-66; Exhibits 12, 13.)

MidAmerican believes that negotiations with the Schildbergs are at an impasse and the grant of eminent domain authority is necessary. (Tr. 150.)

Mr. Schildberg testified at the hearing that he has had a number of family and business commitments that have kept him extremely busy and he has not had time to get together with MidAmerican. (Tr. 251-254.) Mr. Schildberg is concerned that the grant of MidAmerican's petition and eminent domain request will interfere with his ability to take off and land his airplane when the winds are out of the south. (Tr. 255-56.) He is concerned the line is going to be a great hindrance for his happiness and use of his property. (Tr. 256.) He raises buffalo and intended to have tours of the buffalo herd but does not think the presence of a power line will be very appealing to people looking at the buffalo. (Tr. 256.) He is concerned about the presence of an existing fiber optic cable easement and how the grant of an easement to MidAmerican would affect that. (Tr. 256-57.) Some of his property is in the CRP program and he is concerned that disturbance of the surface will make him liable for damages to the federal government. (Tr. 257.) He testified the ground cannot be disturbed during the nesting season, which he thinks is April 15 to August 15. (Tr. 257-58.) He is also concerned about devaluation of his property and interference with his future intent to develop the property. (Tr. 258.)

The existing 161 kV electric transmission line crosses this parcel owned by the Schildbergs and MidAmerican holds a right-of-way easement for a 100-foot-wide strip of land containing the existing line across the Schildberg property. (Tr. 269-70; Docket No. E-21645 Petition Exhibit E-1; Stursma/Hockmuth Report; MidAmerican Exhibit 11A, sheets 134-35.) MidAmerican seeks a new easement for essentially the

same 100-foot-wide strip of land that would allow it to build the proposed 345 kV transmission line across the property. (Docket No. E-21645 Petition Exhibit E-1; Stursma/Hockmuth Report.)

The specific easement rights being sought by MidAmerican are listed in Docket No. E-21645 Petition Exhibit E-1. Essentially, MidAmerican requests a right-of-way easement that would allow it to build the proposed 345 kV transmission line and reconstruct the existing 161 kV transmission line on common towers across the Schildberg property, and operate and maintain them. (Docket No. E-21645 Petition; Stursma/Hockmuth Report; MidAmerican Exhibit 11A, Sheets 134-35.) MidAmerican Exhibit 11A, sheets 134-35, is an aerial photograph of the part of the Schildberg property containing the existing 161 kV transmission line. The existing double-pole structures are shown on the photograph. The locations of the single-pole structures to be built for the proposed line are identified on the photograph and they line up with the existing double-pole structures. Therefore, it appears the proposed line will be constructed at the same location as the existing line on the Schildberg property. (Docket No. E-21645 Petition Exhibit E-1; Stursma/Hockmuth Report; MidAmerican Exhibit 11A, Sheets 134-35.) The only significant change in the new easement would give MidAmerican the right to construct, operate and maintain a 345 kV transmission line in addition to the 161 kV line on common towers. (Docket No. E-21645 Petition; Stursma/Hockmuth Report.) The proposed eminent domain easement would not place restrictions on the Schildbergs' use of the property that are materially different than those already contained in the current easement. (Stursma/Hockmuth Report; Docket No. E-21645 Petition Exhibit E-1.)

In this case, the grant of the right of eminent domain does not mean that the Schildbergs could not continue to use their property as they do today. In its request for the easement and the right of eminent domain, MidAmerican states in Exhibit E-1 that:

Subject to the rights of the Company hereunder, property owners shall have the right to cultivate, use and occupy the land except that no structures or objects, permanent or temporary, shall be erected on said easement and that no brush or other flammable materials shall be deposited or accumulated or burned within said easement area.

No building shall be constructed nor shall any changes be made in ground elevation within the easement area without written permission from the Company indicating that said construction and/or ground elevation changes will not interfere with the Company's rights to operate and maintain its facilities.

Mr. Schildberg's construction company leases another parcel of property for quarrying. (Tr. 258, 267; Exhibit GS-250.) Mr. Schildberg is concerned that the proposed transmission line will interfere with his construction quarrying operation on that property. (Tr. 258-63.) The existing 161 kV transmission line also runs across this piece of property, and MidAmerican has had an easement for the line since approximately 1956 or 1957. (Tr. 292-93.) MidAmerican is not seeking eminent domain over this piece of property. (Docket No. E-21645 Petition Exhibit E.) Therefore, there is no eminent domain request to be ruled on with respect to this parcel.

Iowa Code § 478.17 provides that companies operating transmission lines shall have reasonable access to the lines for the purposes of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and

other devices used in or upon the line. The same section also requires that the company pay landowners for all damages to their land or crops caused by the company when it is on the landowner's property for these purposes. Iowa Code § 478.17. MidAmerican will compensate landowners and/or tenants for any property damages caused by MidAmerican in constructing the line. (Tr. 181.) Once construction has been completed, clean-up performed, and repairs made, MidAmerican will meet with property owners and tenants to mutually determine a fair damage settlement, a receipt and release form will be signed, and MidAmerican will pay property owners for the damage. (Tr. 181.) Landowners and tenants will have five years to renegotiate construction or maintenance damages not apparent at the time of the damage settlement. (Tr. 181.) This should provide sufficient protection to property owners for any damage that may occur.

Mr. Schildberg expressed concern that the proposed transmission line would devalue his property. (Tr. 258.) The purpose of payment for the easement across the Schildbergs' property is to compensate them for the negative effects of having the transmission line on their property, including any negative effect on property value. If a property owner does not agree with the amount offered by MidAmerican for the easement, the owner may refuse to grant the easement, wait for MidAmerican to request eminent domain, and then present evidence and argument regarding the appropriate payment for the easement to the local compensation commission. Iowa Code Chapters 6B and 478. The Board does not set the amount to be paid for an easement. Iowa Code Chapters 6B and 478. The proper place for the Schildbergs to raise their concerns regarding devaluation of the property is before the local

compensation commission, which will set the amount to be paid for the easement when eminent domain is used. Iowa Code Chapter 6B.

MidAmerican has proven that it has been unable to obtain a voluntary easement from the Schildbergs. (Tr. 148–50.) The extent of the easement rights requested for tract number IA-AR-023.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21645 Petition; Stursma/Hockmuth Report.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 148-50, 264-66; Stursma/Hockmuth Report; Exhibits 12, 13; Docket No. E-21645 Petition Exhibit E-1.) If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Schildbergs' property, tract number IA-AR-023.000, to the extent requested in its petition. (Docket No. E-21645 Petition; Tr. 148-50, 248-69; Stursma/Hockmuth Report; Exhibits 12, 13.)

Mr. Wayne and Ms. Ardith Thrailkill (Madison County)

The Thrailkills are the owners of tract IA-MD-028.000 in Docket No. E-21646 (Madison County). (Docket No. E-21646 Petition Exhibit E-6; Tr. 272.) MidAmerican has met with the Thrailkills several times to try to obtain a voluntary easement from them. (Tr. 149.) However, no agreement has been reached. (Tr. 149.) Valuation of the easement is the issue. (Tr. 149, 272-74.) MidAmerican believes that negotiations with the Thrailkills are at an impasse and the grant of eminent domain authority is necessary. (Tr. 150.)

Mr. Thrailkill testified at the hearing that his land is zoned as quarry ground and by putting the proposed transmission line through it, MidAmerican would be depriving him of income for the rock underground. (Tr. 272.) He testified that the amount of money he would make from quarrying is considerably more than what MidAmerican offered him for the easement, so he feels cheated. (Tr. 272-74.) The existing 161 kV transmission line goes across the Thrailkill's property. (Tr. 274.)

The issue of valuation for the requested easement is outside the scope of this case and the Board's jurisdiction. Iowa Code Chapters 6B, 478. The purpose of payment for an easement is to compensate a landowner for the negative effects of having an electric transmission line on the owner's property. If the landowner is dissatisfied with the amount offered for the easement, the owner may refuse to grant an easement and wait for the company to pursue eminent domain. That is what the Thrailkills have chosen to do. The proper place for the Thrailkills to address their concerns regarding appropriate compensation for the easement is before the local compensation commission, which will set the amount to be paid when eminent domain is used. Iowa Code Chapter 6B.

MidAmerican has proven that it has been unable to obtain a voluntary easement from the Thrailkills. (Tr. 149-50, 272-74.) The extent of the easement rights requested for tract number IA-MD-028.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21646 Petition; Stursma/Hockmuth Report.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 149-50; Stursma/Hockmuth Report; certified return receipts) If the requested franchise is

granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Thrailkills' property, tract number IA-MD-028.000, to the extent requested in its petition. (Docket No. E-21646 Petition; Tr. 149-50, 272-74; Stursma/Hockmuth Report.)

Mr. Ronald and Mrs. Alice Mason (Madison County)

Mr. and Mrs. Mason are the owners of tract number IA-MD-030.000 in Docket No. E-21646 (Madison County). (Docket No. E-21646 Petition Exhibit E-7; Tr. 149.) MidAmerican met with Mr. Mason several times in person and spoke with him by telephone to try to obtain a voluntary easement across the Masons' property. (Tr. 149.) MidAmerican has not reached an agreement with the Masons, and it is MidAmerican's understanding that valuation of the easement is the issue. (Tr. 149.) MidAmerican believes that negotiations with the Masons are at an impasse and the grant of eminent domain authority is necessary. (Tr. 150.)

Mr. and Mrs. Mason did not appear at the hearing. As discussed above, the issue of valuation for an easement is outside the scope of this case and the Board's jurisdiction. Iowa Code Chapters 6B, 478. The proper place for the Masons to address their concerns regarding appropriate compensation for the easement is before the local compensation commission, which will set the amount to be paid when eminent domain is used. Iowa Code Chapter 6B.

MidAmerican has proven that it has been unable to obtain a voluntary easement from the Masons. (Tr. 149-50.) The extent of the easement rights requested for tract number IA-MD-030.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket

No. E-21646 Petition; Stursma/Hockmuth Report.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 149-50; Stursma/Hockmuth Report; certified return receipts.) If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Masons' property, tract number IA-MD-030.000, to the extent requested in its petition. (Docket No. E-21646 Petition; Stursma/Hockmuth Report; Tr. 149-50.)

OBJECTIONS

Iowa Code § 478.5 provides that any person whose rights may be affected has the right to file a written objection to the proposed project or the grant of a requested franchise.

As of the date of the hearing, it appeared there remained 77 objections to the proposed route. (written objections; Stursma/Hockmuth Report.) However, 30 of these objectors filed statements of support for the currently proposed route. (written objections.) In addition, all of the remaining objections except those discussed below appear to support the current route or only oppose the original route not currently proposed by MidAmerican. (written objections; Stursma/Hockmuth Report.)

Several of the objections mention a concern that the proposed transmission line would have a negative impact on property values of the land being crossed. (written objections; Stursma/Hockmuth Report.) As discussed above, payment for an easement across a landowner's property compensates the owner for negative effects, including devaluation, of having the proposed line cross the owner's property.

If the owner chooses to refuse MidAmerican's offer of compensation for the easement, the owner can wait for MidAmerican to request eminent domain and bring the devaluation issue before the county compensation commission. Iowa Code Chapters 6B, 478. The Board does not have jurisdiction to set the amount of compensation to be paid for the easement. Iowa Code Chapters 6B, 478; Race v. Iowa Electric Light & Power Co., 134 N.W.2d 335, 338 (Iowa 1965).

In addition, some objectors who expressed a concern regarding negative impact on property values do not own property that the proposed transmission line will cross. (written objections.) There was no evidence presented that the proposed transmission line would have a negative effect on property value of land that is near, but not crossed by, the proposed transmission line. There was also no evidence presented that a proposed transmission line to be constructed in an existing transmission line corridor would have a negative effect on property values.

Some of the objections raise a concern regarding health hazards and some specifically mention EMF. (written objections; Stursma/Hockmuth Report.) As discussed above, MidAmerican designed the proposed line to reduce electric and magnetic field levels and the levels that will be produced at the edge of the right-of-way of the proposed line will not be harmful to the public health and safety. (Tr. 83, 111-41, 208.)

E-21621 (Pottawattamie County) Objections

All but four of the objections filed for Pottawattamie County support the use of the existing route. (written objections; Stursma/Hockmuth Report; Tr. 152-53, 162-65.)

Mr. and Mrs. Bowen filed an objection in which they expressed concerns that the proposed transmission line would endanger their family's health and ruin the property value of their home. (written objection; Stursma/Hockmuth Report; Tr. 152-53, 162-63.) The Bowens requested that MidAmerican follow a different route that did not affect people's homes and they questioned the need for the proposed line. (written objection.) They did not want to have both a 161 kV and a 345 kV transmission line and a 150-foot high tower on their property. (written objection.)

MidAmerican had several conversations and meetings with the Bowens, reached an agreement with them and an easement was signed, and the Bowen's concerns have been addressed. (Tr. 152-53, 162-63.) MidAmerican witness Mr. Bunkers testified the Bowens elected not to withdraw their objection so they could stay informed about the case. (Tr. 153, 162.)

Mr. Gail Geo. Holmes filed an objection on behalf of the Pottawattamie County Historic Trails Association in which he expressed concern regarding possible impacts on historic and archeological sites, specifically the Pioneer Trail (Highway G66). (written objection; Stursma/Hockmuth Report.) This objection appears to be directed at the original route, and the currently proposed route would not impact historic and archeological sites. (written objection; Tr. 153; Stursma/Hockmuth Report.)

Mrs. Julie Jensen and Mr. Mark Jensen each filed an objection expressing the concern that their family's health was at risk due to EMF and requesting gauss meter measurements and placement of the line at a safe distance. (written objections; Stursma/Hockmuth Report.) Mrs. Jensen also expressed the concern that her property would be worthless when EMF is deemed a carcinogen. (written objection.)

MidAmerican had several conversations and meetings with the Jensens. (Tr. 163.) Through this they reached an agreement and the Jensens granted MidAmerican options for easements. (Tr. 153, 163-65.) The Jensens' concerns have been addressed. (Tr. 153, 162-65.) MidAmerican witness Mr. Bunkers testified the Jensens elected not to withdraw their objection so they could stay informed about the case. (Tr. 153, 163.)

E-21645 (Adair County) Objections

Mr. Lyle Beane, owner, Ms. Andrea Beane, tenant, and Mr. Curt Beane, tenant, each filed an objection with respect to the same piece of property. (written objections; Stursma/Hockmuth Report; Tr. 153, 165-66; Exhibit 11A, sheet 151.) The Beanes were concerned the proposed transmission line would be too close to their homes and would create a health hazard. (written objections.)

MidAmerican spoke with the Beanes and slightly shifted the line to address their concerns. (Tr. 153, 165.) MidAmerican and the Beanes reached an agreement and an easement was signed. (Tr. 153, 165.) The concerns of the Beanes have been addressed. (Tr. 153, 165.) MidAmerican witness Mr. Bunkers testified the Beanes elected not to withdraw their objection so they could stay informed about the case. (Tr. 153.)

E-21625 (Dallas County) Objections

Mr. and Mrs. Schaefer filed an objection expressing concerns regarding devaluation of property and health risks of electric and magnetic fields from the proposed line. (written objection.) The Schaefers state their home is about 1,000 feet away from the existing transmission line. (written objection.) They recommend

that MidAmerican construct the transmission lines north of Highway 44 where there are few homes. (written objection.)

As discussed above, there was no evidence presented that the proposed line to be constructed on common towers with an existing line would have any negative effect on the value of property near, but not crossed by, the proposed transmission line. In addition, MidAmerican designed the proposed line to reduce electric and magnetic field levels and the levels that will be produced at the edge of the right-of-way of the proposed line will not be harmful to the public health and safety. (Tr. 83, 111-41, 154, 208.) Also, the Schaefer's property is within the city limits of Urbandale. (written objection; Tr. 154, 166-67; Exhibit 11A, sheets 223-25; Stursma/Hockmuth Report.) MidAmerican is not required to obtain a franchise from the Board for any part of the line that is within city limits. Iowa Code § 478.1. The Schaefer's objection does not provide a reason to deny the requested franchises. Nor does it provide a reason to require any additional terms or modifications of the requested franchises.

Mr. Galen Butterbaugh filed an objection stating that his property value would go down and it is only a matter of years until the property will be developed for housing and commercial purposes. (written objection; Stursma/Hockmuth Report.) Mr. Butterbaugh suggested that MidAmerican keep the route as it is in the north of the section. (written objection; Stursma/Hockmuth Report.)

The meaning of Mr. Butterbaugh's objection is unclear because both the original and current route proposals are identical in this area, to double circuit the proposed 345 kV transmission line on the existing 345 kV transmission line route, which is through the south part of this section. (Stursma/Hockmuth Report.) The

proposed transmission route is just south of Mr. Buterbaugh's property but the line would not cross his property. (Stursma/Hockmuth Report; Tr. 154.) Mr. Buterbaugh did not appear at the hearing so his objection could not be clarified. There was no evidence presented that the proposed line to be constructed on common towers with the existing line would have any negative effect on the value of property near, but not crossed by, the proposed transmission line. It does not appear that Mr. Buterbaugh has an interest that would be adversely affected by the proposed transmission line. (Stursma/Hockmuth Report; Tr. 154; written objection.)

Mr. Bruce and Mrs. Becky Jo Kuehl filed two objections concerning two separate parcels of property they own. (written objection; Stursma/Hockmuth Report.) In the first objection, the Kuehls urged that the proposed line be built as proposed and kept off their property that is north of Urbandale and north of the proposed route. (written objection; Stursma/Hockmuth Report; Tr. 154.) Since the currently proposed route is on the existing 345 kV right-of-way south of this property, it appears the Kuehl's first objection is addressed. (written objection; Stursma/Hockmuth Report; Tr. 154.)

The Kuehls' second objection relates to another piece of property they own southwest of Waukee. (written objection; Stursma/Hockmuth Report.) This property was not affected by the original route but is crossed by the proposed transmission route. (Stursma/Hockmuth Report.) The Kuehls expressed concerns regarding devaluation of their property, negative effect on future development of the property, and health risks of the proposed transmission line. (written objection; Stursma/Hockmuth Report.) MidAmerican and the Kuehls reached an agreement

regarding this second piece of property, the Kuehls granted MidAmerican an easement, and the Kuehls' concerns have been addressed. (Tr. 154, 166.) MidAmerican witness Mr. Bunkers testified the Kuehls did not withdraw their objection so they could stay informed about the case. (Tr. 154.)

On July 9, 2004, Mr. and Mrs. Schlindwein filed an objection expressing a number of concerns. (written objection; Stursma/Hockmuth Report.) The Schlindweins were concerned that MidAmerican had never notified them of the informational meeting even though they had been the owners of record of their property since September of 2001. (written objection; Stursma/Hockmuth Report.) They objected to the conduct of MidAmerican's former right-of-way agent who came to their home without calling first, claimed MidAmerican had an easement that had not been shown on their title opinion, offered them a check for an easement and threatened to take them to court if they did not sign the papers. (written objection.) They stated that both the current and former right-of-way agents did not conduct their meetings in good faith, did not notify them of their rights, and never notified them an informational meeting was held or gave them information about the proposed project. (written objection.) The Schlindweins requested that the proposed franchise be denied, or in the alternative, that MidAmerican not be granted an easement on land affecting their property. (written objection.) They also requested the Board to bring an action against MidAmerican and to assess civil penalties for their continuing failure to notify the Schlindweins of their rights. (written objection.)

MidAmerican currently holds an easement for the existing transmission line on the Schlindweins' property. (Tr. 168-74; Stursma/Hockmuth Report.) MidAmerican

originally requested eminent domain for an overhang easement on a strip of land 15 feet wide along the east side of the Schlindweins' property for the proposed transmission line. (Stursma/Hockmuth Report; Tr. 75-76, 154, 168-74; written objection.) However, MidAmerican redesigned the proposed transmission line and no longer requests any easement over the Schlindwein's property for the proposed line. (Stursma/Hockmuth Report; Tr. 75-76, 154, 168-74; written objection.) MidAmerican needs the existing easement for the existing line, but once the line is rebuilt on common towers with the proposed line, MidAmerican will no longer need any easement on the Schlindwein's property. (Tr. 174.)

Iowa Code § 478.2(3) required MidAmerican to give the Schlindweins notice of the informational meeting. MidAmerican did title work on either side of the proposed line for a quarter of a mile out and created a database of names to send notice of the informational meeting. (Tr. 168-69.) The Schlindweins are in the database. (Tr. 168-69.) MidAmerican mailed notification of the informational meeting to approximately 900 people, but does not have a return receipt card for the Schlindweins. (Tr. 168-69.) Therefore, MidAmerican does not know whether the Schlindweins received notice of the informational meeting. (Tr. 168.) MidAmerican does not know why it does not have a return receipt card for the Schlindweins. (Tr. 169.)

MidAmerican's current right-of-way agent, Mr. Bunkers, testified the former right-of-way agent, Mr. Simmons, attempted to contact the Schlindweins by telephone several times without success, and finally went to their home. (Tr. 143, 171.) Mr. Bunkers testified it is common practice to do this. (Tr. 171.) He also

testified that all MidAmerican agents have checks with them and are prepared to close easements on visits with landowners. (Tr. 171.) He testified that Mr. Simmons first showed the Schlindweins an erroneous drawing of the requested easement, but after surveying, Mr. Bunkers later showed them a corrected drawing. (Tr. 172.) Mr. Bunkers testified that at the first visit, the Schlindweins were unaware that MidAmerican had an easement on their property. (Tr. 172.) He testified it was unfortunate that MidAmerican was the one to notify them of the existing easement, they were upset by the notification, and he thinks it set the tone for the rest of the negotiations. (Tr. 172-73.) Mr. Bunkers testified he had two good visits with the Schlindweins in their home and provided them with information and answers to questions. (Tr. 172.)

MidAmerican has adequately addressed the Schlindwein's concerns except for the failure to give them notice of the informational meeting as required by Iowa Code § 478.2(3). It appears that the easement negotiations got off to a rocky start because the Schlindweins were unaware of MidAmerican's existing easement. Although it is understandable that it would be upsetting to the Schlindweins to learn of the easement from MidAmerican, it was not MidAmerican's fault that the Schlindweins did not know of the existing easement. Mr. Bunkers testified he had two good meetings with the Schlindweins and gave them information and answered their questions. Since the Schlindweins did not appear at the hearing, the undersigned does not know whether these two meetings alleviated their concerns.

However, even though MidAmerican no longer requests an easement from the Schlindweins, its failure to give them notice of the informational meeting as required

is a serious violation. Iowa Code § 478.2(3). However, MidAmerican has the Schlindweins in their database of persons to whom notice was sent. (Tr. 168-69.) MidAmerican sent notice to 900 persons and the Schlindweins are the only persons for whom MidAmerican does not have a return receipt card. (Tr. 168-69.) In addition, the Schlindweins were able to file a written objection expressing their concerns and MidAmerican provided them with information regarding the project. (written objection; Tr. 172-73.) The procedural order and notice of hearing were sent to the Schlindweins. (Docket No. E-21625 file.) Therefore, given the particular circumstances of this case, the failure to provide notice of the informational meeting does not mean the requested franchises should not be granted.

Iowa Code § 478.29 provides that a person who violates a provision of the chapter is subject to a civil penalty of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. The failure to notify under the particular circumstances of this case is not a continuing violation. In determining the amount of the penalty, the Board is to consider the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation. Iowa Code § 478.29. In this case, although the violation is serious, it appears to have been caused by only one of 900 notices being lost in the mail. It appears that MidAmerican made significant effort to identify and send notices as required. The undersigned administrative law judge is not aware of previous violations of this type by MidAmerican. Therefore, imposition of a civil penalty would be inappropriate. However, MidAmerican is put on notice that future violations of the failure to notify

required persons of the informational meeting even if inadvertent may result in imposition of a civil penalty, and in some cases, could be regarded as a continuing violation. When MidAmerican sends notice by certified mail return receipt requested as required by Iowa Code § 478.2(3), it must check the return receipt cards to ensure all are returned. If one is missing, MidAmerican must take remedial steps to notify the affected landowner.

On May 29, June 4, June 5 (two objections), and December 24, 2003, Mr. Carl Hays filed objections expressing a number of concerns regarding MidAmerican's proposed transmission line. (written objections; Tr. 212.) The first four expressed opposition to the original route, which would have crossed Mr. Hays' property. (written objections; Stursma/Hockmuth Report; Tr. 155, 216, 239.) Mr. Hays supported use of the existing 161 kV transmission line route instead of building the line on a new route. (written objections.) In the December 24, 2003, objection, Mr. Hays stated that MidAmerican had erred in failing to file a motion to dismiss his properties from the case and requested that MidAmerican file a motion to dismiss with prejudice from Docket No. E-21625 those properties and property owners whose property bears no relationship to the route proposed in the petition.³ (December 24, 2003 written objection.)

On October 19, 2004, Mr. Hays filed a resistance to the petition. (Tr. 212.) At the hearing, this resistance was considered to be Mr. Hays' prefiled testimony and was spread upon the record. (Tr. 212-13.) MidAmerican objected to this on the

³ Although Mr. Hays' objection is written in terms of other property owners in addition to Mr. Hays, the objection is deemed to apply only to Mr. Hays, since Mr. Hays is not an attorney and cannot represent other individuals.

basis of relevancy arguing that Mr. Hays does not appear to have any affected interest that relates to the proposed transmission line. (Tr. 213.) The undersigned overruled the objection to the extent the resistance was spread upon the record as Mr. Hays' testimony and deferred ruling on relevancy and Mr. Hays' position with respect to the case. (Tr. 213.) Mr. Hays' Exhibits CH-200 through CH-206 were admitted subject to a relevancy objection and ruling on relevancy was deferred. (Tr. 232.)

At the hearing, Mr. Hays testified he largely supports MidAmerican's effort and hopes MidAmerican will be granted its requested franchise. (Tr. 233.) He supports MidAmerican's decision to change the proposed route. (Tr. 233, 243.) He testified his resistance is not to the granting of the petition. (Tr. 233, 239.) Rather, he requests that the franchise be granted under certain conditions and that his resistance be addressed. (Tr. 233-34, 239.)

Mr. Hays testified that public opinion was not among the original route selection criteria, yet public opinion was the sole determinant of the rejection of the original route and selection of the current route. (Tr. 222-28, 234.) Mr. Hays testified that MidAmerican refused his requests for discovery. (Tr. 216-17, 222-23, 230, 234-36, 238-9.) He testified that so long as his three properties are subject to the E docket they have no passable market value, and even though two of the properties were for sale before February 2003, he has been unable to pass in any warranty deed any value whatsoever for 21 months. (Tr. 234, 237, 240.) He testified that his three properties are small and MidAmerican's original proposal would have required an easement over a large part of one property and the entire other two properties.

(Tr. 218, 236-37.) He testified MidAmerican erroneously did not negotiate with him or offer him an easement during the period February through July 2003. (Tr. 218-20, 228-29, 236, 238.) He testified that MidAmerican erred in failing to select the appropriate route before it undertook to acquire easements along that route and this error cost him unnecessary labor and other expense. (Tr. 229.)

Mr. Hays testified that MidAmerican failed to dismiss his properties from the case, holding them under a cloud of "suspended negotiations" for 21 months. (Tr. 221-22, 228-29, 234-36, 240.) By his request for dismissal, Mr. Hays appears to misunderstand the nature of this case, proper procedure in it, and his position in the case. Mr. Hays filed four objections to the original route. He could have withdrawn those objections at any time. Mr. Hays' fifth objection requests that MidAmerican be required to file a motion to dismiss him and his property from the case. This request asks for an action that is not needed, does not make sense in the context of this case, and would have no effect. Mr. Hays could have withdrawn himself from this case at any time by filing a withdrawal of his objections. There was nothing preventing him from doing so except his own choice. There was no action required on the part of MidAmerican or the Board.

Mr. Hays received a copy of MidAmerican's petition and MidAmerican's response to Mr. Hays' resistance. (Tr. 241-42.) He received copies of MidAmerican's routing study and supplemental routing study. (Tr. 244.) He received information from the counties regarding landowners affected by the proposed route. (Tr. 244-45.)

Mr. Hays testified he does not know how MidAmerican was granted the E docket numbers and testified he tried without success to obtain this information. (Tr. 241.) Once MidAmerican notifies the Board that it will hold informational meetings, this triggers the assignment of docket numbers by the Board's Records and Information Center. On February 21, 2003, MidAmerican filed notice with the Board that it would be holding informational meetings in Pottawattamie, Cass, Audubon, Guthrie, and Dallas Counties. (written notice.) The Board's Records and Information Center then assigned an E-docket number to each of the five counties. (Stursma/Hockmuth Report.) A separate docket number was assigned for each county since a separate franchise is required for each county through which the proposed line would pass. (Stursma/Hockmuth Report.) On July 10, 2003, MidAmerican filed notice with the Board that it would be holding informational meetings in Pottawattamie, Cass, Adair, Madison, and Dallas Counties. (written notice.) The Board's Records and Information Center then assigned an E-docket number to Adair and Madison Counties. (Stursma/Hockmuth Report.)

In his resistance⁴, Mr. Hays requests that as a condition of granting the franchises, the Board require MidAmerican to: 1) compensate him for MidAmerican's failure to offer and purchase three easements from him under the original route; 2) compensate him for the loss of market value in his properties due to the "burden of E-21625 between July 2003 and the present;" and 3) reimburse him

⁴ Mr. Hays captioned the resistance as "MidAmerican Energy Company vs. Carl H. Hays" and calls himself the "Defendant" throughout the document. This is incorrect. The correct caption is "In re: MidAmerican Energy Company." There is no defendant in this case. By his filing of written objections, Mr. Hays became an objector. Iowa Code § 478.5.

for the incidental costs of this action, including his fees and attorney's fees.

(Tr. 231.)

On October 27, 2004, MidAmerican filed a response to Mr. Hays' resistance. MidAmerican took exception to Mr. Hays' characterization of himself as a "Defendant," stated there is not a case entitled "MidAmerican Energy Company v. Carl H. Hays," and stated this case is an administrative hearing to consider MidAmerican's petitions for franchises not a criminal or civil lawsuit. MidAmerican argues Mr. Hays' resistance is actually untimely filed prepared responsive testimony in violation of the procedural order. MidAmerican argued Mr. Hays has no interest in this proceeding because his property is located 4.3 miles from the proposed route and he is not a landowner adversely affected by the proposed transmission line. MidAmerican stated it had served Mr. Hays with a copy of all filings it has made in Docket No. E-21625 because he filed an objection. MidAmerican argued Mr. Hays has no standing and his allegations are irrelevant to this proceeding.

MidAmerican stated that Mr. Hays' filing is replete with factual inaccuracies, legal misunderstandings, and erroneous and misleading statements. MidAmerican stated Iowa law prohibited it from negotiating or purchasing easements prior to the informational meeting so it could not provide him with requested information prior to the meeting. MidAmerican stated the purpose of the informational meeting is to discuss information about the project with all interested persons, not to favor Mr. Hays with additional information not publicly available. MidAmerican stated it responded to Mr. Hays' requests for information when it was appropriate to do so

and there is no showing that Mr. Hays was prejudiced by any delay or that the information he sought was not available from other sources.

MidAmerican states that the purchase of other easements is irrelevant to any claim asserted by Mr. Hays, the easements were actually options for easements that were not exercised, and the fact that other discussions moved more quickly than those with Mr. Hays is not relevant. MidAmerican stated it provided Mr. Hays with the requested routing study, supplemental routing study, all exhibits and revised exhibits, and a copy of every filing in Docket No. E-21625. It stated most of Mr. Hays' information requests were discussed at the informational meetings and included in the petitions and exhibits filed December 5, 2003. MidAmerican stated the only post-informational meeting request from Mr. Hays was for names and addresses of all affected landowners, which MidAmerican appropriately declined since it would have violated the other landowners' reasonable expectations of privacy.

MidAmerican stated that cancelled meetings with Mr. Hays are irrelevant to the issues in this case, and no additional contacts were made with Mr. Hays because the route changed and no easement was required from him. MidAmerican stated that its filings support the currently proposed route, it considers the opportunity to receive public comment at informational meetings to be very important, and it believes utilities should be encouraged to seriously consider such public input, not be condemned for it.

With respect to Mr. Hays' request that MidAmerican file a motion to dismiss him, MidAmerican asserted Mr. Hays' interest is not relevant to this proceeding and

his land is not in Docket No. E-21625. There was no error in failing to dismiss him because his property was never involved in the docket. It stated that Docket No. E-21625 commenced with the filing of the petition, and prior to that date, there was no docket to dismiss. It argues there was also no interest of Mr. Hays that would have been affected by any dismissal. Since Mr. Hays' interest was not involved in the docket after its commencement, MidAmerican states a dismissal of any such interest would have been meaningless.

MidAmerican disputed all of Mr. Hays' alleged errors. It stated there is no obligation by MidAmerican to offer to purchase any easement from Mr. Hays for a route not proposed in this docket. It stated there was no cloud on Mr. Hays' title from February 2003 to August 2003 as a matter of fact and as a matter of law. It stated any effect on the title would only have resulted if an easement had been obtained and recorded. It stated there could be no "cloud on defendant's property title" when no easement was negotiated and the petition was not even filed until December 2003. MidAmerican stated since Mr. Hays' property is not involved with the proposed route, there has been no cloud on his title and no diminution in market value.

MidAmerican stated there was no error in changing the route.

MidAmerican opposed Mr. Hays' requests for relief. It stated since Mr. Hays is not an affected landowner in Docket No. E-21625, there is no affected interest to be dismissed. It argues there is no relief to be sought and Mr. Hays has no standing to seek relief. It further argues that all three of Mr. Hays' demands for compensation seek relief that is beyond the jurisdiction of the Board to grant and there is no statutory basis for relief. It argues there is no obligation for MidAmerican to

compensate a landowner for an easement not needed and it would not be in the public interest to do so. It argues there is no showing of a loss of market value in Mr. Hays' properties and there is no "burden of E-21625" between July 2003 and the present because Mr. Hays' property is not at issue in this case. MidAmerican argues there is no showing of any incidental costs of this action due and owing to Mr. Hays. It argues he has no interest at issue in the case and any costs are solely by his choosing and not MidAmerican's responsibility. MidAmerican further states Mr. Hays cannot request attorney's fees for representation he has been providing to himself or to others. In addition, there is no statutory basis for awarding attorney's fees in an electric transmission line proceeding, and no classification of "defendant fees" under Iowa law. MidAmerican argues there is no basis in fact or law for any of Mr. Hays' requests for relief. MidAmerican argues that Mr. Hays has no interest in this docket and he is not an affected party as defined by Iowa Code § 478.2(3) and the Board's rules at 199 IAC 11.5(1). It argues his only interest concerned a route that was abandoned by MidAmerican in the summer of 2003. It argues its suspension of easement negotiations was prudent and proper, Mr. Hays' claims are not relevant to the issues before the Board in Docket No. E-21625, and the resistance should not be considered in ruling on MidAmerican's petitions for franchises.

Mr. Hays' properties are 4.3 miles from the proposed route in Docket No. E-21625 (Dallas County). (Exhibit 10; Tr. 243.) Mr. Hays does not own any property that will be crossed by the proposed transmission line. (Tr. 155, 245-46; Exhibit 10.) Therefore, Mr. Hays does not have any interest that could be adversely affected by

the grant of the requested franchises. In addition, Mr. Hays testified he does not oppose the grant of the requested franchises.

Mr. Hays requests that the Board require MidAmerican to: 1) compensate him for MidAmerican's failure to offer and purchase three easements from him under the original route; 2) compensate him for the loss of market value in his properties due to the "burden of E-21625 between July 2003 and the present;" and 3) reimburse him for the incidental costs of this action, including his fees and attorney's fees.

(Tr. 231.)

There is nothing in Iowa Code Chapter 478 or the Board's rules that provides a basis for the types of relief requested by Mr. Hays. Iowa Code Chapter 478; 199 IAC Chapter 11. First, there is nothing in the electric franchise statute or rules that would require MidAmerican to purchase easements for a route that was not proposed in its petitions, even though it was a route originally discussed at the informational meetings. Iowa Code Chapter 478; 199 IAC Chapter 11. In addition, requiring it to do so would add unnecessary cost to the project to the detriment of the public and would not be in the public interest.

Second, Mr. Hays presented no evidence of a loss of market value in his properties and there is no "burden of E-21625 between July 2003 and the present." Even if he had presented such evidence, it is not within the Board's authority to provide the relief Mr. Hays requests. Iowa Code Chapter 478; 199 IAC Chapters 11 and 25. There is no cloud on Mr. Hays' title. Mr. Hays' property is 4.3 miles from the proposed line and will not be affected by the grant of the requested franchises. There is no factual basis for ordering MidAmerican to compensate Mr. Hays and

there is nothing in Iowa Code Chapter 478 or the Board's rules that would provide any legal basis for such compensation.

Third, Mr. Hays presented no evidence of his incidental costs of this action and no showing that MidAmerican should pay any costs he may have incurred. Even if he had presented such evidence, state law provides no authority to the Board to grant his requested relief. Mr. Hays' costs are solely due to his choosing to participate as an objector, and he is solely responsible for those costs. Mr. Hays has no property interest that would be negatively affected by the grant of the petitions. There is nothing in Iowa Code Chapter 478 or the Board's rules that would provide any legal basis for ordering MidAmerican to reimburse Mr. Hays for his expenses. Mr. Hays did not have an attorney, so he does not have any attorney's fees. Even if he had, there is no basis in Iowa Code Chapter 478 or the Board's rules for ordering MidAmerican to pay attorney's fees. In addition, there is no classification of "defendant fees" under Iowa law.

Therefore, Mr. Hays' requests for compensation as a condition of the grant of the franchises are denied.

Iowa Code § 478.17 provides that companies operating transmission lines shall have reasonable access to the lines for the purposes of constructing, reconstructing, enlarging, repairing, or locating the poles, wires, or construction and other devices used in or upon the line. The same section also requires that the company pay landowners for all damages to their land or crops caused by the company when it is on the landowner's property for these purposes. Iowa Code § 478.17. MidAmerican will compensate landowners and/or tenants for any property

damages caused by MidAmerican in constructing the line. (Tr. 181.) Once construction has been completed, clean-up performed, and repairs made, MidAmerican will meet with property owners and tenants to mutually determine a fair damage settlement, a receipt and release form will be signed, and MidAmerican will pay property owners for the damage. (Tr. 181.) Landowners and tenants will have five years to renegotiate construction or maintenance damages not apparent at the time of the damage settlement. (Tr. 181.) This should provide sufficient protection to property owners for any damage that may occur.

The purpose of payment for an easement across a landowner's property is to compensate the landowner for the negative effects of having the transmission line on the property, including any negative effect on property value. If a property owner does not agree with the amount offered by MidAmerican for the easement, the owner may refuse to grant the easement, wait for MidAmerican to request eminent domain, and then present evidence and argument regarding the appropriate payment for the easement to the local compensation commission. Iowa Code Chapters 6B and 478. The local compensation commission will set the amount to be paid for the easement when eminent domain is used. Iowa Code Chapter 6B.

These requirements provide sufficient protection to the objectors and the owners of the eminent domain parcels. MidAmerican's petitions for franchises in Docket Numbers E-21621, E-21622, E-21625, E-21645, and E-21646 should be granted. MidAmerican has shown that eminent domain as requested in Docket Nos. E-21645 and E-21646 is necessary for the public use of constructing, maintaining and operating the proposed transmission line. Its requests for eminent domain

should be granted to the extent requested in the petitions in Docket Nos. E-21645 and E-21646.

FINDINGS OF FACT

1. Notice of the informational meeting was given except with respect to the Schlindweins, the informational meeting was held, and notice of the petitions in Docket Nos. E-21621, E-21622, E-21625, E-21645, and E-21646 were published and served as required by Iowa Code Chapter 478. (petitions for franchise; proofs of publication; Stursma/Hockmuth Report.)

2. MidAmerican has filed an agreement to pay all costs and expenses of this franchise proceeding pursuant to Iowa Code § 478.4. (petitions for franchise).

3. The proposed transmission line is necessary to serve a public use. (petitions for franchise; Tr. 26-28, 30-31, 39-49, 56-58, 205-06; MidAmerican Exhibits 1-5.)

4. The proposed common tower plan meets MAPP reliability standards and the proposed transmission line represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. (petitions for franchise; Tr. 22-62, 203-10, 286, 288; MidAmerican Exhibits 1–5; Stursma/Hockmuth Report.)

5. The proposed transmission line will conform to the construction and safety requirements of Iowa Code §§ 478.19 and 478.20 and applicable Board rules at 199 IAC 11 and 25. (petitions for franchise; Tr. 67-82, 184-85, 188-89, 286, 288; Stursma/Hockmuth Report.) Other than the requirement that MidAmerican file the reports discussed in the body of this proposed decision at least 30 days prior to

construction in particular areas, no terms, conditions or restrictions regarding construction and safety requirements need to be imposed pursuant to Iowa Code § 478.4.

6. MidAmerican designed the proposed line to reduce electric and magnetic field levels and the levels that will be produced at the edge of the right-of-way of the proposed line will not be harmful to the public health and safety. (Tr. 83, 111-41, 208.) No additional terms, conditions, or restrictions related to electric and magnetic field levels need to be imposed pursuant to Iowa Code § 478.4.

7. MidAmerican has demonstrated that the route it selected is reasonable. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-95, 100-04, 107, 207-09; MidAmerican Exhibits 6–9.) The use of existing transmission corridors will minimize interference with land use and reduce disruption to landowners. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) It will minimize overall environmental impact. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) There will be less impact to cropland, wetlands, stream crossings, sensitive species habitat, and woodland. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) Use of single pole structures will decrease the amount of land needed for each structure, structures will be further apart, and there will be less interference with farming operations and other landowner uses. (Tr. 91, 208; Petition Exhibit D-2; Stursma/Hockmuth Report.) The proposed route is shorter and more direct than the original route. (Petition Exhibit D-2.) Although more expensive initially, it provides for long-term cost savings because the existing aging 161 kV line will not have to be rebuilt later and maintenance costs will be reduced. (Tr. 94-95, 208; Petition Exhibit

D-2.) MidAmerican has proven the proposed route is the most practical and reasonable alternative and it is approved. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-95, 100-04, 107, 207-09; MidAmerican Exhibits 6–9.)

8. MidAmerican has proven that it has been unable to obtain a voluntary easement from the Schildbergs. (Tr. 148–50.) The extent of the easement rights requested for tract number IA-AR-023.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21645 Petition; Stursma/Hockmuth Report; MidAmerican Exhibit 11A.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 148-50, 264-66; Stursma/Hockmuth Report; Exhibits 12, 13; Docket No. E-21645 Petition Exhibit E-1.) If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Schildbergs' property, tract number IA-AR-023.000, to the extent requested in its petition. (Docket No. E-21645 Petition; Tr. 148-50, 248-69; Stursma/Hockmuth Report; Exhibits 12, 13.)

9. MidAmerican has proven that it has been unable to obtain a voluntary easement from the Thrailkills. (Tr. 149-50, 272-74.) The extent of the easement rights requested for tract number IA-MD-028.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21646 Petition; Stursma/Hockmuth Report; MidAmerican Exhibit 11A.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 149-50; Stursma/Hockmuth Report; certified return receipts.) If the requested franchise is granted by the Board, MidAmerican is entitled to be vested

with the power of eminent domain with respect to the Thrailkills' property, tract number IA-MD-028.000, to the extent requested in its petition. (Docket No. E-21646 Petition; Tr. 149-50, 272-74; Stursma/Hockmuth Report.)

10. MidAmerican has proven that it has been unable to obtain a voluntary easement from the Masons. (Tr. 149-50.) The extent of the easement rights requested for tract number IA-MD-030.000 are necessary for the public use of constructing, maintaining, and operating the proposed transmission line. (Docket No. E-21646 Petition; Stursma/Hockmuth Report; MidAmerican Exhibit 11A.) MidAmerican has complied with the requirements of Iowa Code §§ 478.6 and 478.15. (Tr. 149-50; Stursma/Hockmuth Report; certified return receipts.) If the requested franchise is granted by the Board, MidAmerican is entitled to be vested with the power of eminent domain with respect to the Masons' property, tract number IA-MD-030.000, to the extent requested in its petition. (Docket No. E-21646 Petition; Stursma/Hockmuth Report; Tr. 149-50.)

11. The objections do not provide a reason to deny the requested franchises. Nor do they provide a reason to require any additional terms or modifications of the requested franchises.

12. Mr. Hays' property is 4.3 miles from the proposed line and will not be affected by the grant of the requested franchises. (MidAmerican Exhibit 10; Tr. 243.) There is no factual basis for ordering MidAmerican to compensate Mr. Hays and there is nothing in Iowa Code Chapter 478 or the Board's rules that would provide any legal basis for such compensation. (written objections; Tr. 211-47; Hays Exhibits

CH-200–CH-206.) Therefore, Mr. Hays' requests for compensation as a condition of the grant of the franchises are denied.

13. Even though MidAmerican no longer requests an easement from the Schlindweins, its failure to give them notice of the informational meeting that was required at the time is a serious violation. Iowa Code § 478.2(3). However, MidAmerican has the Schlindweins in their database of persons to whom notice was sent. (Tr. 168-69.) MidAmerican sent notice to 900 persons and the Schlindweins are the only persons for whom MidAmerican does not have a return receipt card. (Tr. 168-69.) In addition, the Schlindweins were able to file a written objection expressing their concerns and MidAmerican provided them information regarding the project. (written objection; Tr. 172-73.) The procedural order and notice of hearing were sent to the Schlindweins. (Docket No. E-21625 file.) Therefore, given the particular circumstances of this case, the failure to provide notice of the informational meeting does not mean the requested franchises should not be granted.

CONCLUSIONS OF LAW

1. The Board has the authority to grant franchises to construct, erect, maintain, and operate transmission lines capable of operating at an electric voltage of 69 kV or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current. Iowa Code § 478.1.

2. The Board may grant franchises in whole or in part upon such terms, conditions, and restrictions, and with such modifications as to line location and route, as may seem to it just and proper. Iowa Code § 478.4.

3. Iowa Code § 478.18 requires transmission lines to be constructed near and parallel to roads and railroads and along division lines of land wherever practical and reasonable. The same section requires the utility to construct the line so as not to interfere with the use of the public of the highways or streams of the state and so as not to unnecessarily interfere with the use of any lands by the occupant. The Iowa Supreme Court upheld the Board's conclusion that a new transmission line should follow an existing corridor and that new construction along division lines of land was not practical or reasonable under the circumstances in Gorsche Family Partnership v. Midwest Power, et al, 529 N.W.2d 291 (Iowa 1995). This case is similar to Gorsche. Construction along division lines of land is not practical or reasonable in this case. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-95, 100-04, 107, 207-09; MidAmerican Exhibits 6–9.) MidAmerican's proposed route using existing transmission corridors is the most practical and reasonable alternative and it is approved. (Petitions; Stursma/Hockmuth Report; Tr. 89-91, 93-5, 100-04, 107, 207-09; MidAmerican Exhibits 6–9.)

4. To obtain a franchise, the petitioner must show that the proposed line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. Iowa Code § 478.4.

5. The Board also has the authority to vest the holder of a franchise with the right of eminent domain to the extent the Board may approve, prescribe, and find

necessary for public use within the width and acre limits in Iowa Code § 478.15.

Iowa Code §§ 478.6, 478.15. The burden of proving the necessity for public use is on the company seeking the franchise. Iowa Code § 478.15.

6. MidAmerican has met the requirements of Iowa Code Chapter 478 and 199 IAC Chapters 11 and 25, and franchises should be issued to MidAmerican for the transmission line described in the petitions.

7. MidAmerican failed to give the Schlindweins notice of the informational meeting as required at the time. Iowa Code § 478.29 provides that a person who violates a provision of the chapter is subject to a civil penalty of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation whichever is greater. The failure to notify under the particular circumstances of this case is not a continuing violation. In determining the amount of the penalty, the Board is to consider the size of the business, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation. Iowa Code § 478.29. In this case, although the violation is serious, it appears to have been caused by only one of 900 notices being lost in the mail. It appears that MidAmerican made significant effort to identify and send notices as required. The undersigned administrative law judge is not aware of previous violations of this type by MidAmerican. Therefore, imposition of a civil penalty would be inappropriate. However, MidAmerican is put on notice that future violations of the failure to notify required persons of the informational meeting even if inadvertent may result in imposition of a civil penalty, and in some cases, could be regarded as a continuing violation. When MidAmerican sends notice by certified mail

return receipt requested as required by Iowa Code § 478.2(3), it must check the return receipt cards to ensure all are returned. If one is missing, MidAmerican must take remedial steps to notify the affected landowner.

IT IS THEREFORE ORDERED:

1. Official notice is taken of the report dated August 27, 2004, filed by Mr. Don Stursma and Mr. Dennis Hockmuth.

2. Motions and objections not previously granted or sustained are overruled. Arguments in written filings or made orally at the hearing that are not addressed specifically in this proposed decision and order are rejected, either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comment.

3. Pursuant to Iowa Code Chapter 478 and 199 IAC Chapters 11 and 25, the petitions are hereby granted. If this proposed decision and order becomes the final order of the Board, franchises will be issued to MidAmerican to construct, erect, operate, and maintain the electric transmission line as specifically described in the amended petitions. If this proposed decision and order becomes the final order of the Board, the franchises will be issued to MidAmerican after the proposed decision and order becomes the final order of the Board.

4. MidAmerican must file the following reports with the Board after receiving the franchises but at least 30 days prior to beginning construction in the relevant specific areas: 1) information regarding clearances referred to in the body of this proposed decision; and 2) the results of studies regarding the existing 30-

year-old tower structures in Pottawattamie County referred to in the body of this proposed decision.

5. The Board retains jurisdiction of the subject matter in this docket pursuant to Iowa Code Chapter 478, and may at any time during the period of the franchises make such further orders as may be necessary.

6. This proposed decision and order will become the final order of the Board unless the Board moves to review it or a party files an appeal to the Board within 15 days of its issuance. 199 IAC 7.8(2).

7. A copy of this proposed decision and order will be served by ordinary mail upon MidAmerican, the Consumer Advocate, and the remaining objectors and persons with an interest in an eminent domain parcel on the Board's service list.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 8th day of December, 2004.